

SENATE BILL No. 324

DIGEST OF INTRODUCED BILL

Citations Affected: IC 27-10-2; IC 35-33-14-5.

Synopsis: Bail law. Provides that an undertaking expires 36 months after it is posted for the release of a defendant unless, within the 36 month period: (1) the bond is declared to be forfeited; and (2) the court notifies the surety and the bail agent of the forfeiture. Prohibits a court from assessing a late surrender fee or entering judgment on a forfeiture if the surety or bail agent provides evidence satisfactory to the court that: (1) the defendant fled to a jurisdiction that does not allow extradition or refuses to extradite the defendant; or (2) the prosecuting attorney failed or refuses to extradite the defendant.

Effective: July 1, 2003.

Clark

January 16, 2003, read first time and referred to Committee on Judiciary.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

SENATE BILL No. 324

A BILL FOR AN ACT to amend the Indiana Code concerning bail.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 27-10-2-3 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. (a) An undertaking
3 is valid if it states:

- 4 (1) the court where the defendant is to appear;
5 (2) the amount of the bail; and
6 (3) that it was made before an official legally authorized to take
7 the bond.

8 (b) A surety remains liable on an undertaking despite:

- 9 (1) any lack of the surety's qualifications as required by section 4
10 of this chapter;
11 (2) any other agreement that is expressed in the undertaking;
12 (3) any failure of the defendant to join in the undertaking; or
13 (4) any other defect of form or record, or any other irregularity,
14 except as to matters covered by subsection (a).

15 (c) ~~Any An~~ undertaking ~~written after August 31, 1985, shall expire~~
16 **expires** thirty-six (36) months after it is posted for the release of a
17 defendant from custody ~~This section does not apply to cases in which~~



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1 a unless, within the thirty-six (36) month period:

2 (1) the bond ~~has been~~ is declared to be forfeited; ~~or in which the~~
3 ~~defendant is a fugitive from the jurisdiction after thirty-six (36)~~
4 ~~months; and~~

5 (2) the court notifies the surety and the bail agent of the
6 forfeiture by certified mail, return receipt requested.

7 SECTION 2. IC 27-10-2-12 IS AMENDED TO READ AS
8 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 12. (a) If a defendant
9 does not appear as provided in the bond:

10 (1) the court shall:

11 (A) issue a warrant for the defendant's arrest; and

12 (B) order the bail agent and the surety to surrender the
13 defendant to the court immediately;

14 (2) the clerk shall mail notice of the order to both:

15 (A) the bail agent; and

16 (B) the surety;

17 at each of the addresses indicated in the bonds; and

18 (3) if the defendant later is arrested or otherwise appears:

19 (A) the court shall order that the surety be released from the
20 bond; and

21 (B) after the court issues an order under clause (A), the
22 surety's original undertaking shall be reinstated if the surety
23 files a written request for the reinstatement of the undertaking
24 with the court.

25 This subsection may not be construed to prevent a court from revoking
26 or resetting bail.

27 (b) The bail agent or surety must:

28 (1) produce the defendant; or

29 (2) prove within three hundred sixty-five (365) days:

30 (A) that the appearance of the defendant was prevented:

31 (i) by the defendant's illness or death;

32 (ii) because the defendant was at the scheduled time of
33 appearance or currently is in the custody of the United
34 States, a state, or a political subdivision of the United States
35 or a state; or

36 (iii) because the required notice was not given; and

37 (B) the defendant's absence was not with the consent or
38 connivance of the sureties.

39 (c) **Except as provided in subsection (e)**, if the bail agent or surety
40 does not comply with the terms of subsection (b) within one hundred
41 twenty (120) days after the mailing of the notice required under
42 subsection (a)(2), a late surrender fee shall be assessed against the bail

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agent or surety as follows:

(1) If compliance occurs more than one hundred twenty (120) days but not more than one hundred eighty (180) days after the mailing of notice, the late surrender fee is twenty percent (20%) of the face value of the bond.

(2) If compliance occurs more than one hundred eighty (180) days but not more than two hundred ten (210) days after the mailing of notice, the late surrender fee is thirty percent (30%) of the face value of the bond.

(3) If compliance occurs more than two hundred ten (210) days but not more than two hundred forty (240) days after the mailing of notice, the late surrender fee is fifty percent (50%) of the face value of the bond.

(4) If compliance occurs more than two hundred forty (240) days but not more than three hundred sixty-five (365) days after the mailing of notice, the late surrender fee is eighty percent (80%) of the face value of the bond.

(5) If the bail agent or surety does not comply with the terms of subsection (b) within three hundred sixty-five (365) days of the mailing of notice required under subsection (a)(2), the late surrender fee is eighty percent (80%) of the face value of the bond.

All late surrender fees are due as of the date of compliance with subsection (b) or three hundred sixty-five (365) days after the mailing of notice required under subsection (a)(2), whichever is earlier, and shall be paid by the surety when due. If the surety fails to pay, then the late surrender fees shall be paid by the commissioner as provided in subsection ~~(f)~~ (g).

(d) Except as provided in subsection (e), if the bail agent or surety does not comply with the terms of subsection (b) within three hundred sixty-five (365) days of the mailing of notice required by subsection (a)(2), the court shall declare forfeited an amount equal to twenty percent (20%) of the face value of the bond. The court shall immediately enter judgment on the forfeiture, without pleadings and without change of judge or change of venue, and assess against the bail agent or surety all actual costs resulting from the defendant's failure to appear. These costs include jury fees, witness fees, and any other documented costs incurred by the court.

(e) A court may not assess a late surrender fee or enter judgment on a forfeiture if the surety or bail agent provides evidence satisfactory to the court that:

(1) the defendant fled to a jurisdiction that:



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1 **(A) does not allow extradition; or**
 2 **(B) refuses to extradite the defendant; or**
 3 **(2) the prosecuting attorney failed or refuses to extradite the**
 4 **defendant.**

5 **(f)** Proceedings relative to the bond, forfeiture of a bond, judgment
 6 on the forfeiture, execution of judgment, or stay of proceedings shall
 7 be in the court in which the bond was posted. Costs and late surrender
 8 fee assessed against a bail agent or surety under subsection (c) shall be
 9 satisfied without further order of the court as provided in subsection ~~(f)~~.
 10 **(g).** The court may waive the late surrender fee or extend the period for
 11 payment beyond the statutorily permitted period, or both, if the
 12 following conditions are met:

- 13 (1) A written request is filed with the court and the prosecutor.
 14 (2) The surety or bail agent provides evidence satisfactory to the
 15 court that diligent efforts were made to locate the defendant.

16 ~~(f)~~ **(g)** In the case of an insurer, if the fees, costs, or judgment is not
 17 paid, then the clerk shall mail the notice to the commissioner. The
 18 commissioner shall:

- 19 (1) within ten (10) days of receipt of the notice forward a copy by
 20 certified mail to the insurer;
 21 (2) forty-five (45) days after receipt of the notice from the clerk,
 22 if the commissioner has not been notified by the clerk that the
 23 fees or judgment or both have been paid, pay the late surrender
 24 fee assessment, costs, and any judgment of forfeiture ordered by
 25 the court from funds the insurer has on deposit with the
 26 department of insurance;
 27 (3) upon paying the assessment, costs, and judgment, if any, from
 28 funds on deposit, immediately revoke the license of the insurer,
 29 if the satisfaction causes the deposit remaining to be less than the
 30 amount required by this article; and
 31 (4) within ten (10) days after revoking a license, notify the insurer
 32 and the insurer's agents and the clerk of each county in Indiana of
 33 the revocation and the insurer shall be prohibited from conducting
 34 a bail bond business in Indiana until the deposit has been
 35 replenished.

36 ~~(g)~~ **(h)** The notice mailed by the clerk to the commissioner pursuant
 37 to the terms of subsection ~~(f)~~ **(g)** shall include:

- 38 (1) the date on which the defendant originally failed to appear as
 39 provided in the bond;
 40 (2) the date of compliance with subsection (b), if compliance was
 41 achieved within three hundred sixty-five (365) days after the
 42 mailing of the notice required by subsection (a)(2);



- 1 (3) the amount of the bond;
- 2 (4) the dollar amount of the late surrender fee due;
- 3 (5) the amount of costs resulting from the defendant's failure to
- 4 appear; and
- 5 (6) if applicable, the dollar amount of the judgment of forfeiture
- 6 entered by the court.

7 ~~(h)~~ (i) Any surety on a bond may appeal to the court of appeals as
8 in other civil cases without moving for a new trial, and on the appeal
9 the evidence, if any, shall be reviewed.

10 ~~(i)~~ (j) Fifty percent (50%) of the late surrender fees collected under
11 this chapter shall be deposited in the police pension trust fund
12 established under IC 36-8-10-12 and the remaining fifty percent (50%)
13 shall be deposited in the county extradition fund established under
14 IC 35-33-14.

15 SECTION 3. IC 35-33-14-5 IS AMENDED TO READ AS
16 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. The fund consists of
17 the portion of late surrender fees deposited in the fund under
18 ~~IC 27-10-2-12(i)~~. **IC 27-10-2-12(j).**

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